

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 155041
Issued to: Lincoln D. Gray

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2308

Lincoln D. Gray

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 20 September 1982, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's License for three months, on twelve months' probation, upon finding him guilty of misconduct. The specification found proved alleges that while serving as Ocean Operator aboard the United States vessel C. DOMINATOR under authority of the license above captioned, on various dates between 12 May and 6 July 1982, Appellant wrongfully operated said vessel, a passenger vessel, without having on board an unexpired Certificate of Inspection.

The hearing was held at Long Beach, California on 20 September 1982.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence:

1. A copy of the vessel's Certificate of Inspection issued 6 May 1981;
2. A copy of the application for a new Certificate of Inspection dated 7 July 1982;
3. A copy of the temporary Certificate of Inspection dated 7 July 1982;
4. A copy of the Certificate of Inspection dated 9 July 1982;
5. A copy of the vessel's Deck Log;
6. Testimony of the vice-president of the company operating the vessel.

In defense, Appellant made an unsworn statement.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order suspending all licenses issued to Appellant for a period of three months on twelve months' probation.

The entire Decision and Order was served on 12 October 1982. Appeal was timely filed on 19 October 1982 and perfected on 20 January 1983.

FINDINGS OF FACT

It is undisputed that Appellant operated the C. DOMINATOR, a passenger vessel subject to Coast Guard inspection, between 12 May 1982 and 6 July 1982 without a valid Certificate of Inspection on board.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. Appellant's good faith belief that the C. DOMINATOR had a valid Certificate of Inspection is a defense to the misconduct charge;
2. The safety requirements of Platform Habitat justify unknowing operation of the C. DOMINATOR without a valid Certificate of Inspection.
3. The order of the Administrative Law Judge is excessive.
4. The case should be remanded to the Administrative Law Judge for further proceedings.

APPEARANCE: William F. Daly, Jr. of Keesal, Young and Logan, P.A., Pier F.-Berth 203, Long Beach, California.

OPINION

I

Appellant's assertion that a good faith belief that there was a valid Certificate of Inspection constitutes a defense is without merit.

The specification alleges that the vessel was operated without

the Certificate of Inspection on board. This is prohibited by 46 CFR 176.01-40. Even the actual existence of a valid Certificate of Inspection would not be a defense to this specification unless it were aboard the vessel. Appellant, in his brief, admits that he knew the Certificate of Inspection was not on board and made inquiry regarding it.

Appellant, under this basis, also argues that the Judge's findings should be set aside because Appellant's employer misled him into believing there was a valid Certificate of Inspection. Although this is a matter properly argued to the Administrative Law Judge in mitigation, it is not a defense. The vessel's operator is expected to know the status of the Certificate of Inspection and is given ample opportunity to do so. Not only must the Certificate of Inspection be aboard the vessel and posted but Certification Expiration Date Stickers must be posted where readily visible to each boarding passenger. 46 CFR 176.01-45.

II

The assertion that Appellant was justified in operating the vessel without a Certificate of Inspection because of the safety requirements of the drilling rig Platform Habitat is also without merit.

Appellant asserts that the dangerous nature of the work on the drilling rig required a vessel to be available at all times in case of emergency. He does not allege that any of the occasions on which he operated the vessel involved an actual emergency. This is not an excuse for violating the law.

III

Appellant's contention that the order of the Administrative Law Judge is excessive is without merit.

The order suspended Appellant's license for three months on twelve months' probation. Under the order Appellant suffers no actual loss of the use of his license. The Certificate of Inspection is the means, chosen by statute, for ensuring that vessels such as C. DOMINATOR meet minimum safety requirements for carrying passengers. Operation of a vessel without a Certificate of Inspection, in violation of law, is a serious offense and likely to compromise the safety of all on board.

Appellant argues that he was misled concerning the existence of a valid Certificate of Inspection by his employer and feared that his employer would fire him if he did not operate the vessel. These may be mitigating circumstances and the Decision and Order of

the Administrative Law Judge shows that he was aware of them. Considering the seriousness of the offense, the order is quite lenient.

IV

Finally, Appellant asks that the case be remanded for further proceedings. In support of this, Appellant states that he is unable to find evidence that enforcement action has been taken against the owners of C. DOMINATOR for their role in operating it without a Certificate of Inspection. His brief contains an affidavit of one of the owners of C. DOMINATOR who would so testify and of his own counsel who has made inquiries regarding such action.

Appellant argues, in essence, that failure to take action against others makes the order against his license unjust. I do not agree.

There is often more than one type of enforcement action that can result from a violation. The fact that all may not be invoked does not invalidate those that are. Therefore, even if it should be true that enforcement has not been taken against the vessel owners, this would not be relevant and is not cause to order further proceedings.

CONCLUSION

There was substantial evidence of a reliable and probative nature to support the finding of the Administrative Law Judge. The hearing was conducted in accordance with the applicable regulations. The matters raised by Appellant in his brief are not valid defenses to the charge and specification. The order of the Administrative Law Judge is not excessive under the circumstances. Appellant has not provided sufficient reason to remand the case for further proceedings.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 6 October 1982 is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 5th day of May, 1983.